

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No.: 05-11697GAO

MARILYN KUNELIUS

Plaintiff,

v.

TOWN OF STOW, separately, A
PARTNERSHIP OF UNKNOWN NAME
BETWEEN TOWN OF STOW and the TRUST
FOR PUBLIC LAND, THE TRUST FOR
PUBLIC LAND separately and CRAIG A.
MACDONNELL, in his individual capacity

Defendants

**DEFENDANT TOWN OF STOW'S MOTION FOR
SUMMARY JUDGMENT**

The defendant Town Stow moves for summary judgment in its favor on the plaintiff's complaint. See Fed. R. Civ. P. 56; Local Rule 56.1. As set forth in greater detail in the accompanying Memorandum of Law and Statement of Undisputed Facts, the Town is entitled to summary judgment because the plaintiff has failed to establish facts sufficient to support any of her claims against the Town. More particularly,

(1) Count I against the Town for contract and specific performance fails because the Town assigned its right of first refusal option to the Trust for Public Land ("TPL") and it was the TPL, not the Town, who stepped into the shoes of the buyer on the purchase and sales agreement.

(2) Count VI against the Town for violation of 42 U.S.C. § 1983 fails because the plaintiff has not alleged or established the existence of any unconstitutional municipal

custom or policy and, further, has not established the deprivation of any constitutional right.

Counts I and VI are the only counts directed at Stow. Those two counts fail, entitling Stow to summary judgment on the plaintiff's complaint.

Counts III, V, and VII (for violation of c. 93A, intentional interference with contractual relations, and fraud and misrepresentation) are not directed at Stow but at an "Partnership between Stow and TPL." The plaintiff, however, has presented no evidence establishing any such partnership and cannot pursue such claims.

Wherefore, the defendant requests that summary judgment enter in its favor on the plaintiff's complaint.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(E) of the Local Rules for the United States District Court for the District of Massachusetts, the defendant Town of Stow requests that they be afforded the opportunity to present oral argument on the issues outlined in this Motion.

Respectfully submitted,
 The Defendant,
 The Town of Stow,
 By its attorneys,

/s/ Deborah I. Ecker

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